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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------|--------------------|
| 09/766,549 | 01/18/2001 | John D. Martin | KCOS116809 | 9921 |
| 26389 | 7590 | 09/08/2005 | EXAMINER | |
| CHRISTENSEN, O'CONNOR, JOHNSON, KINDNESS, PLLC 1420 FIFTH AVENUE SUITE 2800 SEATTLE, WA 98101-2347 | | | | RESTIFO, JEFFREY J |
| ART UNIT | | PAPER NUMBER | | |
| | | 3618 | | |

DATE MAILED: 09/08/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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|------------------------------|-----------------|---------------|
| Office Action Summary | Application No. | Applicant(s) |
| | 09/766,549 | MARTIN ET AL. |
| Examiner | Art Unit | |
| Jeffrey J. Restifo | 3618 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 20 June 2005.
2a) This action is **FINAL**. 2b) This action is non-final.
3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1,4-10,14-20,22-24,26,28-34,36 and 37 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) Claim(s) 10,14-20,30-34 and 36 is/are allowed.
6) Claim(s) 1,6-8,22-24,26,29 and 37 is/are rejected.
7) Claim(s) 5,9 and 28 is/are objected to.
8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.
10) The drawing(s) filed on 18 January 2001 is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) Notice of References Cited (PTO-892)
2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
4) Interview Summary (PTO-413)
Paper No(s)/Mail Date _____.
5) Notice of Informal Patent Application (PTO-152)
6) Other: _____.

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 6/20/05 has been entered.

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 4, 6-8, and 37 are rejected under 35 U.S.C. 102(b) as being anticipated by Rause (US 3,156,988 A).

Rause discloses a boot 10 with outsole 12 with toe and heel regions, a frame secured to said toe and heel regions 16, 18, each with fore an aft holding members 34, 35, and a plurality of adjustment members secured to said holding members and including an engagement portion 40 made of an elastomeric material, a threaded portion 38, and an aperture 48 for receiving a tool, wherein said engagement members

can be adjusted away from the outsole increasing the space between the outsole and surface of ground or binding, as shown in figures 1-4.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 22-26, and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rause (US 3,156,988 A).

Rause discloses a boot 10 with outsole 12 with toe and heel regions, a frame secured to said toe and heel regions 16, 18, each with fore an aft holding members 34, 35, and a plurality of adjustment members secured to said holding members and including an engagement portion 40 made of an elastomeric material, a threaded portion 38, and an aperture 48 for receiving a tool, wherein said engagement members can be adjusted away from the outsole increasing the space between the outsole and surface of ground or binding, as shown in figures 1-4. Rause does not disclose the frame as being "within" the outsole. Embedding binding frames within the outsoles of boots is well-known in the art. It would have been obvious to one having ordinary skill in the art at the time of the invention to have embedded the outsole frame of Rause in the outsole in order to prevent unwanted removal during use. The binding is an intended

purpose and the boot of Rause is certainly capable of being secured in a strap type binding.

Allowable Subject Matter

5. Claims 10, 14-20, 30-34, and 36 are allowed.
6. Claims 5, 9, and 28 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

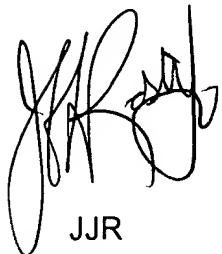
7. Applicant's arguments with respect to claims 1-37 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeffrey J. Restifo whose telephone number is (571) 272-6697. The examiner can normally be reached on M-F (10:00-6:00), alternate Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christopher P. Ellis can be reached on (571) 272-6914. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



JJR

Jeffrey J. Restifo
Examiner
Art Unit 3618